

NORTHWEST ENVIRONMENTAL ADVOCATES



✓
HQ-401-00262-11
RECEIVED
NOV 09 2010
[Signature]

November 8, 2010

FREEDOM OF INFORMATION ACT REQUEST

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Via E-Mail: hq.foia@epa.gov

Re: Agency Operating Guidance

To whom it may concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*, we are writing to request the disclosure of public documents within the control of your agency. I make this request on behalf of Northwest Environmental Advocates (NWEA). NWEA is a regional non-profit environmental organization founded in 1969 and dedicated to preserving and protecting natural resources in the Pacific Northwest and works nationally to improve implementation and enforcement of the Clean Water Act. NWEA works through advocacy, litigation, and education to protect and restore water and air quality, wetlands and wildlife habitat. NWEA has a long history of interest and involvement in environmental issues in the Pacific Northwest and nationally. NWEA also provides advice and information to many environmental organizations across the country.

EPA produces various guidance documents concerning legal, policy, and technical issues. Among these, it has produced "Agency Operating Guidance" for some or all fiscal years. Using the search mechanism on the EPA website, we have been able to locate four such guidance documents. We are seeking the remainder of these annual guidance documents, or any such replacement as EPA has established, in order to better understand and reconstruct agency policies. Using the National Service Center for Environmental Publications we were able to obtain the Agency Operating Guidance documents for FY 1987, 1988, 1990, and 1993. If the remaining documents are already publicly available, we would be happy to understand how to obtain them and withdraw or limit this FOIA request.

In addition, NWEA assumes that if these documents are not available on EPA's website, they will be made available to NWEA in electronic form. If we are mistaken and EPA instead intends to respond to this request by providing paper copies, we would urge you to contact us to discuss providing only a portion of the pages in each of these lengthy documents. We are not interested in their entirety.

www.NorthwestEnvironmentalAdvocates.org

P.O. Box 12187, Portland, OR 97212-0187 Phone (503) 295-0490 Fax Upon Request

Printed on 100% post-consumer recycled, non-de-inked, non-rebleached paper

Document Request

NWEA is hereby requesting:

1. All "Agency Operating Guidance" documents for the fiscal years (FY) 1989, 1991, 1992, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, and 2010. In other words, we are requesting the Agency Operating Guidance documents for all years since the one produced for fiscal year 1989 with the exception of fiscal years 1990 and 1993; and
2. If, and only if, EPA has changed the name of what was formerly known as a "FY XX Agency Operating Guidance," we request the new documents that perform this same role for the years listed in item No. 1 above.

Fee Waiver Request

We hereby request a waiver of fees for costs incurred in locating and duplicating these materials, pursuant to 5 U.S.C. § 552(a)(4)(iii), because disclosure "is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." Disclosure of the information we have requested is in the public interest as it will be used to contribute to the protection of the nation's waters and their designated uses. Specifically, this information will be used in public comments and administrative and court proceedings related to water quality programs carried out by the States. NWEA is a non-profit organization whose members live, work, and recreate in the Pacific Northwest and across the country. None of this information is of commercial interest to NWEA as a whole or its members individually. More detailed information supporting this fee waiver justification is provided below.

1. **Clear statement of NWEA's interest in the requested documents.**

NWEA is a nonprofit public interest organization with membership throughout the Pacific Northwest and in other states. It has repeatedly proven itself a leader in protecting water quality and endangered aquatic species, and actively participates in many state and federal agency actions that affect water quality here in the Pacific Northwest and across the nation. Protecting our nation's wide range of water resources means ensuring that state and federal agencies comply with federal environmental statutes. The requested information would allow NWEA to remain informed, by better understanding the evolution of EPA policies, and continue to provide meaningful input in state and federal agency actions to ensure compliance with federal statutes and to assist others in doing so across the country. NWEA's particular interest is in ensuring that States meet the statutory and regulatory expectations established for them, a goal shared by EPA.

To the extent that the fiscal year Agency Operating Guidance documents clarify and explain the history of EPA policy matters on Clean Water Act regulatory programs, they are essential to understanding EPA's other guidance documents, most of which are readily available on EPA's website.

2. The use proposed for the documents and whether NWEA will derive income or other benefits from such use.

NWEA proposes to use this information to educate itself, the public, and the States and to provide the documents to other organizations seeking to ensure protective Clean Water Act regulatory programs are established and implemented by the States. As noted above, NWEA will derive no income, either to the organization as a whole or its members individually, from the requested information. Portions of the requested documents may be made available on NWEA's website or, alternatively, they will be summarized for that purpose.

3. A statement of how the public will benefit from such use and from the release of the requested documents.

State and federal compliance with federal environmental statutes is clearly in the public interest. Equally important, NWEA is a necessary informational conduit to the public, the media, government agencies, and other environmental organizations such as water quality groups, salmon conservation and recovery groups, and organizations focused on protection of endangered species as well as regulatory agencies that carry out the Clean Water Act. While EPA water quality guidance documents are fairly readily available on EPA's website, the fiscal year Agency Operating Guidance documents that illuminate the development of EPA policy are not, with the exception of four such documents. Based on NWEA's inability to locate more than four of the documents of the type requested, NWEA assumes that the information contained in the requested documents may, in fact, be considered "new" information because the documents have not been made available as a body and are difficult, if not impossible, to come by individually. As such, the disclosed information will enhance public understanding to a significant extent. The requested documents will assist NWEA in educating the public and assisting other organizations advocating for regulation of water pollution sources in order to protect water quality, human health, and threatened and endangered species.

4. If specialized use of the documents or information is contemplated, a statement of NWEA's qualifications that are relevant to the specialized use.

The specialized use NWEA intends is to evaluate the evolution of certain EPA Clean Water Act policies that are set out in various guidance documents and regulations in order to ensure they have been carried out in a timely fashion by the States. NWEA is qualified to use the requested

information because NWEA is highly involved in Clean Water Act regulatory programs and has contacts with organizations across the country which might similarly have an interest in the documents.

5. A statement indicating how NWEA plans to disseminate the documents or information to the public.

NWEA disseminates public information through newsletters, public meetings, brochures, educational sessions, its website, other organizations, and to the media. The material subject to this request will not be of interest to the general public unless it has been summarized. Once it is summarized, it will be posted on NWEA's website. Additionally, portions of the requested documents may be posted if they would be of interest to other organizations working for clean water. Organizations and their representatives will be apprised that the information is there to be used as needed and they will be apprised of the availability of the documents from NWEA in general.

6. Any additional information NWEA deems relevant to its request for a fee waiver.

NWEA relies primarily on small sources of funding to support its day-to-day activities. The cost of acquiring the requested information in the absence of a fee waiver is entirely prohibitive for NWEA and would impair its ability to protect the public interest.

We look forward to your response within ten days after receipt of this request. Please feel free to contact me at 503/295-0490 if you have any questions about how to respond to this request.

Sincerely,

Nina Bell
Executive Director

FOIA Request -- Agency Operating Guidance

Nina Bell

to:

FOIA HQ

11/08/2010 07:16 PM

Please respond to nbell

Show Details

Please find attached a FOIA request regarding EPA's Agency Operating Guidance documents.

Nina

Nina Bell, J.D., Executive Director

Northwest Environmental Advocates

P.O. Box 12187

Portland, OR 97212-0187

www.NorthwestEnvironmentalAdvocates.org

nbell@advocates-nwea.org

503/295-0490

RE: HQ Acknowledgement
Nina Bell
to:
Vivian Warden
11/09/2010 06:22 PM
Please respond to nbell
Show Details

Dear Vivian,

I received your telephone message and I am writing with some information. Here is one example of the results of searching for "agency operating guidance" as an exact phrase in a title in the advanced search mechanism.

[http://nepis.epa.gov/Exe/ZyNET.exe/2000820H.TXT?](http://nepis.epa.gov/Exe/ZyNET.exe/2000820H.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1991+Thru+1994&Docs=&Query=230B92001&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=pubnumber^%22230B92001%22&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=pubnumber&IntQFieldOp=1&ExtQFieldOp=1&XmlQuery=&File=D%3A\zyfiles\Index%20Data\91thru94\Txl00000004\2000820H.txt&User=ANONYMOUS&Password=anonymous&SortMethod=hj-&MaximumDocuments=10&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=pj&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x)
[ZyActionD=ZyDocument&Client=EPA&Index=1991+Thru+1994&Docs=&Query=230B92001&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=pubnumber^%22230B92001%22&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=pubnumber&IntQFieldOp=1&ExtQFieldOp=1&XmlQuery=&File=D%3A\zyfiles\Index%20Data\91thru94\Txl00000004\2000820H.txt&User=ANONYMOUS&Password=anonymous&SortMethod=hj-&MaximumDocuments=10&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=pj&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x](http://nepis.epa.gov/Exe/ZyNET.exe/2000820H.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1991+Thru+1994&Docs=&Query=230B92001&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=pubnumber^%22230B92001%22&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=pubnumber&IntQFieldOp=1&ExtQFieldOp=1&XmlQuery=&File=D%3A\zyfiles\Index%20Data\91thru94\Txl00000004\2000820H.txt&User=ANONYMOUS&Password=anonymous&SortMethod=hj-&MaximumDocuments=10&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=pj&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x)

Since that link may or may not work considering how long it is, here is the information on that document:

EPA Policy, Planning and Evaluation (PM-219)
EPA 230-B-92-001 (July 1992)
Agency Operating Guidance FY 1993

I am sorry that I did not include this information in the original request and hope that I have not inconvenienced you too much.

Nina

From: Warden, Vivian [mailto:warden.vivian@epa.gov]
Sent: Tuesday, November 09, 2010 12:38 PM
To: nbell@advocates-nwea.org
Subject: HQ Acknowledgement

RECEIVED
NOV 12 2010